

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

Criminal No. 01-152 (1) (RHK/AJB)

Civil No. 05-140 (RHK)

vs.

ORDER

Jesus Flores-Flores,

Defendant.

Following Petitioner's plea of guilty to unlawful reentry after deportation in violation of 8 U.S.C. § 1326, he was sentenced to 96 months in prison; the sentence was to run concurrently to a Minnesota state sentence which he was then serving.

Now before the Court is his § 2255 Petition to correct his sentence based on Booker. In addition, claims that the Bureau of Prisons is not following this Court's direction with respect to the concurrent sentence and has failed to award him credit for the time spent serving his state sentence.

With respect to his complaint regarding the Bureau of Prison's execution of his sentence, such claims must be filed under 28 U.S.C. § 2241. See Machen v. Morrison, 307 F.3d 709 (8th Cir. 2002). As the Petitioner is incarcerated at the Federal Correction Institution in Beaumont, Texas, a § 2241 challenge must be brought in the Eastern District of Texas.

His Booker challenge is now foreclosed by the Eighth Circuit's recent decision in Never Misses a Shot v. United States, ___ F.3d ___, 2005 WL 1569403 (8th Cir. 2005),

holding that Booker is not retroactive on collateral review.

Based upon the foregoing and upon all the files, records and proceedings herein, **IT IS ORDERED** that the Motion to Vacate (CR-01-152, Doc. No. 23; CV-05-140, Doc. No. 1) is **DENIED**.

Dated: July 27, 2005

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge